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8 **UNITED STATES DISTRICT COURT**
9 **WESTERN DISTRICT OF WASHINGTON**
10 **AT SEATTLE**

11 RIVERBANK, a Washington State Chartered
12 Bank,

13 Plaintiff,

14 v.

15 M/V ROCK A BYE, Official No. 1152013, her
16 engines, boilers, machinery, components, etc., in
17 rem and JOHN GF HIEBER JR. and DEBRA A.
18 HIEBER, individually and on behalf of their
marital community, in personam,

19 Defendants.

20 DEBRA A. HIEBER, individually and as
21 personal representative of the Estate of John GF
Hieber Jr.,

22 Counterclaim Plaintiff,

23 v.

24 RIVERBANK, a Washington State Chartered
25 Bank,

26 Counterclaim Defendant.

10 **AT LAW AND IN ADMIRALTY**

11 **CASE NO. 2:18-cv-00387-RSM**

12 **STIPULATION AND ORDER**
13 **ALLOWING SALE OF VESSEL**

14 STIPULATION AND ORDER ALLOWING SALE OF
15 VESSEL - 1
16 {S1823050; 1 }

17  **WITHERSPOON·KELLEY**
18 Attorneys & Counselors

19 422 W. Riverside Avenue, Suite 1100 Phone: 509.624.5265
Spokane, Washington 99201-0300 Fax: 509.458.2728

I. STIPULATION

Plaintiff/Counterclaim Defendant RiverBank by and through its attorneys Witherspoon Kelley and Defendant/Counterclaim Plaintiff Debra A. Hieber, individually, and as Personal Representative of the Estate of John GF Hieber, Jr., by and through her attorneys, Lukins & Annis, PS., hereby stipulate as follows:

1. John GF Hieber, Jr. executed a promissory note in favor of RiverBank, and subsequently executed several change in terms agreements (the "Note")

2. As security for payment of the Note, RiverBank accepted a Preferred Ship Mortgage ("Mortgage") on a vessel known as the M/V ROCK A BYE, Official No. 1152013, her engines, boilers, machinery, components, etc. (the "Vessel")

3. On March 15, 2018, a Warrant was issued for the Maritime Arrest of the Vessel (the "Warrant") (ECF No. 11). On March 30, 2018, the U.S. Marshal duly executed the Warrant for Arrest and immediately released custody of the Vessel to the Substitute Custodian, Crow's Nest Yachts through its member Dale Partna (collectively, "Crow's Nest Yachts") (See ECF Nos. 19-20.)

4. The Vessel remains under arrest.

5. Since the Vessel's arrest, RiverBank has been paying the U.S. Marshall's costs, insurance, substitute custodial fees and other incidental costs in order to maintain and preserve the Vessel (the "Arrest and Custodial Fees").

6. In order to eliminate additional Arrest and Custodial Fees and other expenses related to the Vessel, the parties agree that the Vessel shall be sold to Mr. Kelvin Price and/or H Days Ltd. (collectively, "Buyer") at the gross purchase price of \$330,000 (the "Purchase Price"), including commission due Crow's Nest Yachts.

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1 7. RiverBank shall receive 100% of the Net Proceeds from the sale. "Net Proceeds"
2 shall mean the Purchase Price less normal and customary selling expense, including without
3 limitation, the commission due Crow's Nest Yachts, outstanding moorage fees, recording and like
4 fees.
5

6 8. RiverBank shall apply all Net Proceeds against the secured portion of the Note.
7 The parties reserve for future determination the allocation of Net Proceeds between principal,
8 interest, late charges, collection costs, and other charges that may be due under the Note and/or
9 Mortgage as may be agreed to by the parties or determined by the Court.
10

11 9. The purchase and sale of the Vessel by Buyer shall be made in accordance with
12 and pursuant to 28 USC § 2004.

13 10. The parties waive the appraisal and confirmation requirements for a private
14 foreclosure provided for under 28 USC § 2001 as allowed by 28 USC § 2004.
15

16 11. The parties leave for later determination whether RiverBank is entitled to a
17 deficiency judgment (and if so, the amount of any such deficiency judgment), and Debra Hieber's
18 counterclaims against Riverbank. In the event it's determined that Riverbank is entitled to a
19 deficiency judgment, the amount of any such judgment shall be based on all relevant evidence,
20 including without limitation, the Purchase Price, the fair market value of the Vessel at the date of
21 sale, other offers to buy the vessel, the Mathers Marine Survey dated March 14, 2018, and Debra
22 Hieber's counterclaims.
23

24 12. Defendant Debra Hieber reserves all defenses, positions and arguments regarding
25 whether Riverbank is entitled to recover a deficiency judgment and the amount of any deficiency
26 judgment.
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13. RiverBank agrees that the Warrant issued pursuant to that Order for Issuance of Warrant for Maritime Arrest entered by this Court on March 15, 2018 (ECF No. 11) shall be released upon the closing of the sale of the Vessel.

14. Upon the closing of the sale of the Vessel to the Buyer, Crow's Nest Yachts shall be released of all duties and obligations as the Substitute Custodian of the Vessel as delineated in that Order Granting Motion Appointing Substitute Custodian entered by this Court on March 15, 2018 (ECF No. 12).

15. Upon consummation of the purchase of the Vessel by Buyer and receipt of the Net Proceeds by RiverBank, RiverBank will cause its interest in the Vessel to be released.

16. The parties agree that in the event Buyer fails to consummate the purchase and sale of the Vessel as contemplated by this Stipulation and Order, this Stipulation and the below Order shall be null and void with no force and effect.

Stipulated this 13th day of March, 2019.

LUKINS & ANNIS, P.S.

By: /s/ Trevor R. Pincock
TREVOR R. PINCOCK, WSBA No. 36818
Attorneys for Defendants

WITHERSPOON KELLEY

By /s/ Shelley N. Ripley
SHELLEY N. RIPLEY, WSBA No. 28901
Attorneys for Plaintiff

**STIPULATION AND ORDER ALLOWING SALE OF
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{S1823050; 1}



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II. ORDER

This matter came before the Court on the Stipulation set forth above. Based upon the Stipulation and the pleadings and files herein, and the Court being fully advised in the proceedings, it is hereby:

ORDERED, ADJUDGED AND DECREED that RiverBank is the mortgagee under a Preferred Ship Mortgage granting it a security interest in the Vessel.

FURTHER ORDERED, ADJUDGED AND DECREED that the Vessel shall be sold to the Buyer for Purchase Price, including commission due Crow's Nest Yachts.

FURTHER ORDERED, ADJUDGED AND DECREED that RiverBank shall receive 100% of the Net Proceeds from the sale.

FURTHER ORDERED, ADJUDGED AND DECREED that RiverBank shall apply all Net Proceeds against the secured portion of the Note. The parties reserve for future determination the allocation of Net Proceeds between principal, interest, late charges, collection costs, and other charges that may be due under the Note and/or Mortgage as may be agreed to by the parties or determined by the Court.

FURTHER ORDERED, ADJUDGED AND DECREED that the purchase and sale of the Vessel by Buyer shall be made in accordance with and pursuant to 28 USC § 2004.

FURTHER ORDERED, ADJUDGED AND DECREED that the appraisal and confirmation requirements for a private foreclosure provided for under 28 USC § 2001 are hereby waived as allowed by 28 USC § 2004.

FURTHER ORDERED, ADJUDGED AND DECREED that it is left for later determination whether RiverBank is entitled to a deficiency judgment (and if so, the amount of any such deficiency judgment), and Debra Hieber's counterclaims against Riverbank. In the event

1 it's determined that Riverbank is entitled to a deficiency judgment, the amount of any such
2 judgment shall be based on all relevant evidence, including without limitation, the Purchase Price,
3 the fair market value of the Vessel at the date of sale, other offers to buy the vessel, the Mathers
4 Marine Survey dated March 14, 2018, and Debra Hieber's counterclaims.
5

6 FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Debra Hieber
7 reserves all defenses, positions and arguments regarding whether Riverbank is entitled to recover
8 a deficiency judgment and the amount of any deficiency judgment.
9

10 FURTHER ORDERED, ADJUDGED AND DECREED that the Warrant against the
11 Vessel shall be released upon consummation of the sale to Buyer.
12

13 FURTHER ORDERED, ADJUDGED AND DECREED upon the closing of the sale of
14 the Vessel to the Buyer, Crow's Nest Yachts shall be released of all duties and obligations as the
15 Substitute Custodian of the Vessel.
16

17 FURTHER ORDERED, ADJUDGED AND DECREED that RiverBank shall release its
18 interest in the Vessel upon consummation of the purchase of the Vessel by Buyer and receipt of
19 the Net Proceeds.
20

21 FURTHER ORDERED, ADJUDGED AND DECREED in the event Buyer fails to
22 consummate the purchase and sale of the Vessel as contemplated by the parties' Stipulation and
23 this Order, the Stipulation and this Order shall be null and void with no force and effect.
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25 DATED this 15th day of March 2019.
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RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

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Presented by:
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5 WITHERSPOON KELLEY
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7 By /s/ Shelley N. Ripley
8 SHELLEY N. RIPLEY, WSBA No. 28901
9 Attorneys for Plaintiff
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11 **Approved as to Form,**
12 **Notice of Presentment Waived:**
13

14 LUKINS & ANNIS, P.S.
15

16 By: /s/ Trevor R. Pincock
17 TREVOR R. PINCOCK, WSBA No. 36818
18 Attorneys for Defendants
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STIPULATION AND ORDER ALLOWING SALE OF
VESSEL - 7
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